

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

AMERICAN MOTORISTS INSURANCE
COMPANY, an Illinois corporation,

Plaintiff,

v.

Case No. 07-CV-5263

CRP CONSTRUCTION COMPANY;
DMA GILROY PARTNERS, LLC; RONALD
DANIELS; STATE OF CALIFORNIA;
CALIFORNIA DEPARTMENT OF
TRANSPORTATION; CITY OF GILROY;
CHRISP COMPANY; KEITH B. HIGGINS
AND ASSOCIATES, INC.; ROBERT F. ENZ
CONSTRUCTION, INC.,

Defendants.

JOINT STIPULATION OF DISMISSAL AND ORDER OF DISMISSAL

The parties hereto, by and through their respective counsel, hereby stipulate and agree to dismiss the above-captioned action, with prejudice and without costs, in accordance with the following provisions and releases:

WHEREAS, CRP Construction Company ("CRP") and DMA Gilroy Partners, LLC ("DMA") have asserted that American Motorists Insurance Company ("AMICO") issued a certain commercial liability insurance policy under Policy Number 7RS 668 450-02, effective from November 20, 2002 through November 20, 2003 (the "Policy") and that AMICO is obligated to defend and indemnify CRP and DMA for claims asserted against them in a lawsuit captioned *Ronald Daniels, et al. v. State of California, et al.*, corresponding with case number 1-04-CV-013479 (the "Underlying Action") under the aforesaid Policy; and

WHEREAS, for various reasons, AMICO has denied and reserved its right to deny that it is obligated to defend or indemnify CRP or DMA for the Underlying Action, and it continues to deny that the aforesaid Policy affords coverage, either in whole or in part, to CRP or DMA for the Underlying Action; and

WHEREAS, AMICO brought suit in the United States District Court, Northern District of California - San Jose Division, in an action captioned *American Motorists Insurance Company v. CRP Construction Company, et al.*, and corresponding with Case No. 07-CV-5263 (the "Action") to seek a declaration that it has no duty to defend or indemnify CRP or DMA in the Underlying Action which alleges, among other things, that CRP and DMA, general

contractors hired to perform off-site roadway and traffic signal improvements in Gilroy, California, are liable for the alleged negligent placement of road signs which proximately caused a motorcycle accident and resulting personal injuries to the underlying plaintiff (Ronald Daniels);

WHEREAS, the parties and their respective insurers desire to stipulate and agree that all claims asserted in the above-captioned Action are dismissed with prejudice and on the merits, subject to the following general stipulation and release, with all parties bearing their own costs and attorneys' fees;

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties, by and through their respective counsel, hereby stipulate and agree as follows:

1. **Recitals.** The recitals above are incorporated into this Joint Stipulation of Dismissal.

2. **Defendants' Release of AMICO.** Defendants, for themselves and their respective insurers, including, but not limited to, Steadfast Insurance Company, past, present and future partners, officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, predecessors and successors in interest and assigns, and all other persons, firms, or corporations in which any of the former have been, are now or may hereinafter be affiliated, hereby forever release and discharge Plaintiff AMICO and all of its, past, present and future partners, officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, predecessors and successors in interest and assigns, and all other persons, firms, or corporations in which any of the former have been, are now or may hereinafter be affiliated of and from any and all claims, debts, liabilities, damages and causes of action which were, might or could have been asserted in the above-captioned Action, including, without limitation, any and all past and present claims, rights, causes of action, obligations or demands for economic loss, interest, general damages, statutory claims or damages, punitive damages, attorneys' fees, and all costs incurred directly or indirectly which, in any manner or fashion, arise from or relate to the Policy, the Action or the Underlying Action.

3. **AMICO's Release of Defendants.** AMICO, for itself, past, present and future partners, officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, predecessors and successors in interest and assigns, and all other persons, firms, or corporations in which any of the former have been, are now or may hereinafter be affiliated, hereby forever release and discharge Defendants, their insurers, and all of their, past, present and future partners, officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, predecessors and successors in interest and assigns, and all other persons, firms, or corporations in which any of the former have been, are now or may hereinafter be affiliated of and from any and all claims, debts, liabilities, damages and causes of action asserted in the above-captioned Action, including, but not limited to, all matters that arise from or relate to the Policy, the Action, or the Underlying Action.

4. **Authority to Execute.** Each person signing this Joint Stipulation of Dismissal warrants and represents that he has full authority to execute the same on behalf of the parties on whose behalf he so signs, and that he is acting within the scope of such authority, and agrees to indemnify and hold harmless each other party from any successful claim that such signature was unauthorized.

5. **Integration.** This Joint Stipulation of Dismissal represents the entire agreement between the parties regarding the Action and all prior understandings and agreements regarding the Action have been incorporated herein.

6. **Execution In Counterparts/By Fax.** This Joint Stipulation of Dismissal may be executed in multiple counter-parts, each of which shall be an original and all of which shall constitute one and the same instrument. Any one or more of the Parties may execute and deliver the signature page to this Joint Stipulation of Dismissal by facsimile.

Respectfully Submitted,

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|---|--|
| <p>CRP CONSTRUCTION COMPANY and DMA GILROY PARTNERS, LLC</p> <p>By: _____ One of their attorneys</p> <p>Linda Wendell Hsu SELMAN BREITMAN LLP 33 New Montgomery, 6th Floor San Francisco, CA 94105 Telephone: (415)979-2024 Facsimile: (415)979-2099 lhsu@selmanbreitman.com</p> | <p>AMERICAN MOTORISTS INSURANCE COMPANY</p> <p>By:  _____ One of their attorneys</p> <p>Stacy A. Smith PIERCE & SHEARER, LLP 2483 E. Bayshore Road, Suite 202 Palo Alto, CA 94303 Telephone: (650)843-1900 Facsimile: (650)843-1999 stacy@pierceshearer.com</p> |
| <p>CITY OF GILROY</p> <p>By: _____ One of their attorneys</p> <p>Timothy J. Schmal BURTON, VOLKMANN & SCHMAL, LLP 133 Mission Street, Ste. 102 Santa Cruz, CA 95060 Telephone: (831)425-5023 Facsimile: (831)427-3159 tjs@bvslp.com</p> | <p>ROBERT F. ENZ CONSTRUCTION, INC.</p> <p>By: _____ One of their attorneys</p> <p>Clay A. Coelho MERRILL, NOMURA & MOLINEUX 250 Rose Street Danville, CA 94526 Telephone: (925) 833-1000 ext. 5 Facsimile: (925) 833-1001 ccoelho@merrillnomura.com</p> |

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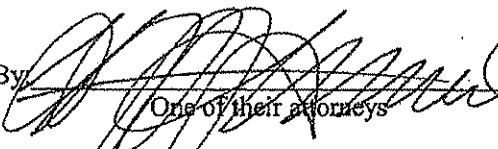
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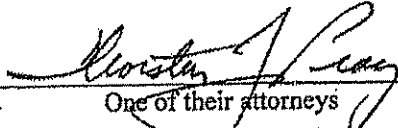
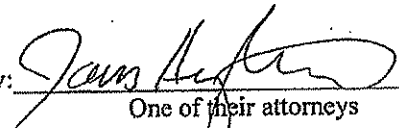
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| CALIFORNIA DEPARTMENT OF TRANSPORTATION and STATE OF CALIFORNIA By: <u><i>David Sullivan</i></u> One of their attorneys David Sullivan CALTRANS LEGAL OFFICE 1120 N Street <i>595 MARKET STREET</i> Sacramento, California <i>95814 #1700</i> Telephone: (415) 982-3130 <i>SF, CA</i> Facsimile: (415) 904-2333 <i>94105</i> <u>david_sullivan@dot.ca.gov</u> | KEITH B. HIGGINS & ASSOCIATES, INC. By: _____ One of their attorneys Thorsten J. Pray GORDON & REES 275 Battery Street, Suite 2000 San Francisco, CA 94111 Telephone: (415) 986-5900 Facsimile: (415) 986-8054 <u>tpray@gordonrees.com</u> |
| CHRISP COMPANY By: _____ One of their attorneys James F. Hetherington JENKINS, GOODMAN, NEUMAN & HAMILTON 417 Montgomery Street, 10 th Floor San Francisco, CA 94104 Telephone: (415) 705-0400 Facsimile: (415) 705-0411 <u>jheterington@jgn.com</u> | STEADFAST INSURANCE COMPANY By: _____ Authorized Representative Kelli Belpedio Claim Specialist P.O. Box 66975 Chicago, IL 60666-0975 Telephone: (847) 605-6097 Facsimile: (847) 413-5714 <u>Kelli.belpedio@zurichna.com</u> |

IT IS HEREBY ORDERED:

In accordance with, and pursuant to, the foregoing joint stipulation of the parties, this matter is dismissed with prejudice and on the merits, with all parties bearing their own costs and attorneys' fees.

ENTERED:

Honorable Judge

| | |
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| <p>CALIFORNIA DEPARTMENT OF TRANSPORTATION and STATE OF CALIFORNIA</p> <p>By: _____ One of their attorneys</p> <p>David Sullivan CALTRANS 1120 N Street Sacramento, California 95814 Telephone: (415) 982-3130 Facsimile: (415) 904-2333 david_sullivan@dot.ca.gov</p> | <p>KEITH B. HIGGINS & ASSOCIATES, INC.</p> <p>By:  _____ One of their attorneys</p> <p>Thorsten J. Pray GORDON & REES 275 Battery Street, Suite 2000 San Francisco, CA 94111 Telephone: (415) 986-5900 Facsimile: (415) 986-8054 tpray@gordonrees.com</p> |
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ENTERED:

Honorable Judge

Jan. 18. 2008 8:01AM

No. 0793 P. 5/5

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| CALIFORNIA DEPARTMENT OF TRANSPORTATION and STATE OF CALIFORNIA By: _____ One of their attorneys David Sullivan CALTRANS 1120 N Street Sacramento, California 95814 Telephone: (415) 982-3130 Facsimile: (415) 904-2333 <u>david_sullivan@dot.ca.gov</u> | KEITH B. HIGGINS & ASSOCIATES, INC. By: _____ One of their attorneys Thorsten J. Pray GORDON & REES 275 Battery Street, Suite 2000 San Francisco, CA 94111 Telephone: (415) 986-5900 Facsimile: (415) 986-8054 <u>tpray@gordonrees.com</u> |
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ENTERED:

Honorable Judge

CERTIFICATE OF SERVICE

I, Christina Yanacek, declare as follows:

I am over eighteen years of age and not a party to the within action. I am employed in Santa Clara County, California. My business address is 2483 E. Bayshore Road, Suite 202, Palo Alto, California 94303.

On January 22, 2008, I served a copy of the following:

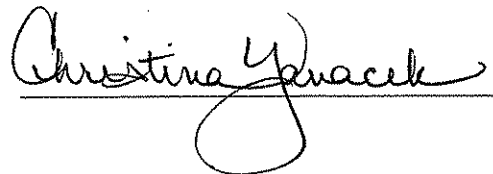
**JOINT STIPULATION OF DISMISSAL AND ORDER OF
DISMISSAL**

on the parties named below as follows:

SEE ATTACHED SERVICE LIST

- ☒ **BY U.S. MAIL:** I am readily familiar with my employer's practice for collection and processing of correspondence for mailing with the United States Postal Service. I served said document(s) by following ordinary business practice and placing said document(s) in a sealed envelope for collection and mailing. In the ordinary course of business, said document(s) would have been deposited for first-class delivery with the United States Postal Service, with postage fully prepaid, the same day as placed for deposit. Each envelope bore the name and address of the person served as follows:
- ☐ **VIA FACSIMILE:** By transmission by facsimile machine telephone number (650) 843-1999 to the fax numbers listed with the names above.
- ☐ **BY PERSONAL SERVICE:** By personally delivering said document(s) to the following:
- ☐ **BY OVERNIGHT DELIVERY:** I delivered the envelopes to FedEx for overnight delivery to the office(s) of the above addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 22, 2008 at Palo Alto, California.



SERVICE LIST**Attorneys For CRP Construction Company
And DMA Gilroy Partners, LLC:**

Linda Wendell Hsu, Esq.
 SELMAN BREITMAN LLP
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Attorneys For City Of Gilroy:

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**Attorneys For Keith B. Higgins &
Associates, Inc.:**

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**Authorized Representative For Steadfast
Insurance Company:**

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 Chicago, IL 60666-0975
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 Facsimile: (847) 413-5714
 Email: Kelli.belpedio@zurichna.com